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ATTORNEYS FOR ALL PLAINTIFFS

UNITED STATES DISTRICT COURT

**NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO/OAKLAND
DIVISION**

JANE ROE, an individual; MARY ROE,
an individual; SUSAN ROE, an
individual; JOHN ROE, an individual;
BARBARA ROE, an individual;
PHOENIX HOTEL SF, LLC, a
California limited liability company;
FUNKY FUN, LLC, a California limited
liability company; and 2930 EL
CAMINO, LLC, a California limited
liability company,

Plaintiffs,

v.

CITY AND COUNTY OF SAN
FRANCISCO, a California public entity,

Defendants.

Case No. 4:24-cv-01562-JST

Joint Case Management Statement

**ASSIGNED FOR ALL PURPOSES
TO THE HONORABLE DISTRICT
JUDGE JON S. TIGAR,
COURTROOM 6**

Hearing Date: March 25, 2025
Time: 2:00 p.m.
Place: Videoconference

Trial Date: None set.

1 Pursuant to the Court's January 22, 2025 Minute Entry (ECF No. 79), the
2 parties jointly submit this Joint Case Management Statement.

3 **I. THE PARTIES' STATEMENTS**

4 **A. Plaintiffs' Statement**

5 At the previous Case Management Conferences ("CMC"), this Court indicated
6 it would adopt plaintiffs' proposal to conduct some discovery and then hold a hearing
7 on plaintiffs' motion for a preliminary hearing. The purpose of this case management
8 conference was to discuss and schedule the briefing and the hearing on the
9 preliminary injunction. The implicit understanding was that discovery would have
10 progressed by the time of this CMC so that the preliminary hearing could be
11 scheduled.

12 Plaintiffs have done everything in their power to obtain evidence to support
13 their request, but the City has done little to meet its discovery obligations in the past
14 two months.

15 Plaintiffs propounded document requests on November 5, 2024. The City
16 produced a minimal amount of documents in December. The City acknowledges that
17 additional responsive documents exist but has not produced a single additional
18 document since December.¹

19 As this Court will recall, plaintiffs deposed one City witness, SFPD Acting
20 Captain Danny Manning (now retired), in early December 2024. His testimony
21 corroborated plaintiffs' allegations. Plaintiffs were scheduled to depose five more City
22

23 ¹ Plaintiffs and Defendant reached agreements regarding the written discovery
24 disputes that were the subject of the January 17, 2025, CMC Statement. (ECF No.
25 75.) On February 7, the parties filed a Joint Letter Brief describing the terms of the
26 agreement. (ECF No. 84.) Since February 12, Plaintiffs have requested productions of
27 documents according with this agreement. The City requested a meet and confer
28 regarding search terms, which the parties conducted on February 25. Since that date,
Plaintiffs have been waiting for the results of a hit report and initial production.
Neither have been produced. The City, in the meantime, has obtained through
subpoenas numerous medical and business records pertaining to plaintiffs.

1 employees during the balance of December. The City Attorney, however, cancelled
2 those depositions at the last moment on the ground that the witnesses needed
3 outside counsel. The City Attorney thereafter dismissed plaintiffs repeated requests
4 to get the depositions on calendar, arguing that the office needed a lot of time to find
5 outside counsel.

6 At the last CMC, January 21, this Court made clear that the City Attorney
7 had to, as soon as possible, produce those five City employees.

8 Yet, as of the date of this statement only two of those employees have been
9 deposed.

10 One of those employees, Mark Mazza, gave detailed testimony that
11 corroborated plaintiffs' allegations. For over a decade, Mr. Mazza has worked full-
12 time on the streets of the Tenderloin. He has extensive, personal knowledge of what
13 happens in that neighborhood, including what City agencies and vendors do in the
14 Tenderloin.

15 Mr. Mazza confirmed that the DPH and a City vendor, Healthright 360,
16 operated a drug ingestion site at the Tenderloin Linkage Center, which included
17 giving drug paraphernalia to the addicts who came to the Center to smoke fentanyl
18 and use other drugs. Mr. Mazza confirmed that this drew extensive drug activity and
19 related problems to the area.

20 Mr. Mazza also confirmed that the DPH and/or DPH-funded vendors continue
21 to deliver fentanyl smoking kits and other drug paraphernalia to addicts who refuse
22 offers of shelter and treatment, and instead loiter and live on the neighborhood's
23 streets and sidewalks. He identified DPH employee Eileen Loughran as someone who
24 would likely be knowledgeable about the City's involvement in the distribution of
25 drug paraphernalia in the Tenderloin.

26 Mr. Mazza confirmed that he observed increased drug and criminal activity
27 around the City-run shelters in the Tenderloin.

28 Mr. Mazza confirmed that the City continues to provide "street based" services

1 to addicts who refuse shelter and treatment and opt to instead openly buy and use
2 drugs on the neighborhood's sidewalks and public spaces.

3 Only recently have plaintiffs obtained deposition dates for the other three city
4 employees, and for Eileen Loughran. The deposition schedule is as follows:

5 (1) Eileen Loughran, the City's current Community Affairs Manager, and
6 former Director of Overdose Prevention, for the San Francisco Department
7 of Public Health, on April 7, 2025.

8 (2) Emily Cohen, Deputy Director for Communications & Legislative Affairs
9 for the San Francisco Department of Homelessness and Supportive
10 Housing ("HSH"), on April 16, 2025 (she is being represented by outside
11 counsel Randall Knox);

12 (3) Krista Gaeta, Director of Strategic Initiatives within the Population
13 Behavioral Health Services Division, San Francisco Department of Public
14 Health, on April 18, 2025 (represented by Mr. Knox); and

15 (4) Dr. Hillary Kunins, Director of Behavioral Health Services and Mental
16 Health SF, San Francisco Department of Public Health, on April 21, 2025
17 (represented by Mr. Knox).

18 Plaintiffs have no idea when the City intends to produce responsive
19 documents.

20 Assuming the scheduled depositions go forward and the City produces
21 responsive documents in the near future, plaintiffs should be in a better position to
22 make a realistic proposal regarding the briefing and scheduling of a preliminary
23 injunction.

24 Plaintiffs thus propose that this Court hold a CMC in May for the express
25 purpose of scheduling the briefing and hearing on plaintiffs' motion for a preliminary
26 injunction.

27 Finally, plaintiffs note that the City Attorney has expressed strong opposition
28 to the relief plaintiffs request in this case (safe and accessible sidewalks and an end

1 to the City's affirmative conduct that attracts drug dealers, addicts and other
2 nuisances to the neighborhood). The City Attorney has argued that such relief is both
3 infeasible and cannot be the judicially imposed. However, it appears that San
4 Francisco's newly elected Mayor may see things differently. For example, plaintiffs
5 have complained in the public filings in this case that the City directly and indirectly
6 hands out fentanyl smoking kits and other drug paraphernalia on the sidewalks of
7 the Tenderloin, and that this causes and contributes to public and private nuisances.
8 The Mayor's Office reportedly recently issued a directive to "revisit San Francisco
9 harm-reduction policies with an eye toward preventing city-funded nonprofits from
10 distributing fentanyl smoking supplies."²

11 **B. Defendant's Statement**

12 Plaintiffs failed to inform the Court that the parties conducted numerous meet
13 and confer meetings and came to an agreement, which resolved the parties' disputes
14 about Plaintiffs' document requests and the City's subpoena for medical records
15 related to two plaintiffs (Mary Roe and Susan Roe). The parties filed a stipulation
16 related to the medical records and the City served new subpoenas to the medical
17 providers consistent with the parties' agreement. The City has not yet received the
18 requested medical documents. With respect to the Plaintiffs' document requests, the
19 City Attorney's Office has collected some of the requested and they are being process
20 for production. The City Attorney's continues to work with our client agencies to
21 develop the search terms for requested documents. The parties agreed on a time
22 frame for potentially responsive documents and the City is working on proposed
23 search terms. The City Attorneys' Office will provide plaintiffs' counsel with an
24 update before the case management conference.

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28 ² <https://www.sfchronicle.com/sf/article/lurie-homeless-mental-health-20224911.php>

1 The City notes that plaintiffs’ counsel continues to serve public records act
2 requests on City agencies and is receiving many of the same documents plaintiffs
3 requested in discovery.

4 Finally, the City notes that Plaintiff misstated the City’s position in this
5 litigation and the efforts of the Mayor and City departments to respond to the
6 conditions in the Tenderloin. Citing a newspaper article, Plaintiffs argue that “[t]he
7 Mayor’s Office reportedly recently issued a directive to “revisit San Francisco harm-reduction
8 policies with an eye toward preventing city-funded nonprofits from distributing fentanyl smoking
9 supplies.” Plaintiffs misrepresent the article by omitting the next sentence: “*The Chronicle*
10 *previously reported that some nonprofits hand out foil, straws and pipes to fentanyl users, though*
11 *officials said the city didn’t provide the equipment itself or expressly fund their purchase.* Lurie’s
12 directive indicated that the city would ‘re-focus’ its harm reduction work on “longstanding
13 evidence-based public health interventions,” including needle exchanges that help prevent the
14 spread of diseases such as hepatitis C and AIDS.” (Italics added.) In any event, the Mayor’s
15 directive speaks for itself. See Exhibit A.

16 **II. SETTLEMENT AND ADR**

17 Pursuant to the Court’s direction, the parties reported to Magistrate Judge
18 Alex G. Tse on January 7, 2025, for a scheduling conference. (ECF No. 71-73.) The
19 parties took part in a Settlement Conference with Magistrate Judge Tse on February
20 26, 2025. There was no agreement reached. The parties agreed to a continued
21 settlement conference on April 23, 2025, with a representative of the Mayor’s Office
22 to attend. (ECF No. 86-87.)

23 **III. SCHEDULING**

24 **A. Preliminary Injunction**

25 **1. Plaintiffs’ Statement**

26 Plaintiffs propose a CMC in May to set the schedule.

27 **2. Defendant’s Statement**

28 The City agrees that the Court should set a CMC in May to set a schedule for

1 Plaintiffs' intended motion for a preliminary injunction.

2
3
4 Dated: March 18, 2025

WALKUP, MELODIA, KELLY & SCHOENBERGER

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6 By:



7 MICHAEL A. KELLY
8 RICHARD H. SCHOENBERGER
9 MATTHEW D. DAVIS
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11 Dated: March 18, 2025

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